

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 28, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 04HD-292

HAWAII

Amend Prior Board Actions of February 25, 2005, Item D-1, Grant of Perpetual, Non-Exclusive Easement to Philip K. Binney and Peter A. Binney for Access and Utility Purposes, Keahialaka, Puna, Hawaii, Tax Map Key: 3rd/ 1-3-08: portion of 04 and 12

At its meeting of February 25, 2005, Agenda Item D-1, the Board of Land and Natural Resources, approved a perpetual, non-exclusive easement to Philip K. Binney and Peter A. Binney for access and utility purposes. **(Exhibit A)**

In preparing a similar recommendation to the Board involving another individual, over the same alignment, staff discovered that the Binney Board Action of 2/25/04 inadvertently excluded a 1.623-acre section of the proposed easement area. Closer review of the different maps and documents utilized, depicted conflicting information of this portion of the abandoned railroad right-of-way. In one instance, the Plat Maps indicated that the entire subject easement area was contained within Tax Map Key: 3rd/ 1-3-08: 12, referred to as "Road-B". However, the survey maps of the area indicated that there were actually two sections involved. One identified as Road-B, TMK: 3rd/ 1-3-08:12 (2.437 acres) and another as Lot 4-B TMK: 3rd/ 1-3-08: portion of 04 (1.623 acres). **(Exhibit B)** The missing section of roadway, identified as Lot 4-B **(Exhibit C)**, is a section of the railroad right-of-way/easement located somewhere between Tax Map Key: 3rd/ 1-3-08:12 (Road-B) and Tax Map Key: 3rd/ 1-3-07:23. In accounting for this excluded section of the proposed easement, the total easement area would in effect be increased from 2.437 acres to a total of 4.06 acres. Lot 4-B, of Tax Map Key: 3rd/ 1-3-08: portion of 04 was Deeded to the State in 1982, under Land Office Deed No. S-27, 508.

RECOMMENDATION:

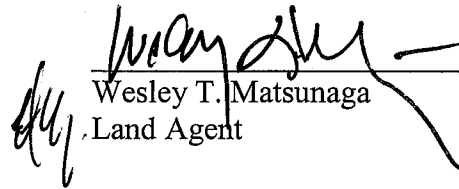
That the Board amend its prior actions of February 25, 2004, Item D-1, grant of perpetual, non-exclusive easement to Philip K. Binney and Peter A. Binney for utility and access purposes by:

- A. Including that portion of the railroad right-of-way/easement referred to as Lot 4-B

and identified as Tax Map Key: 3rd/ 1-3-08: portion of 04, which consists of 1.623 acres;

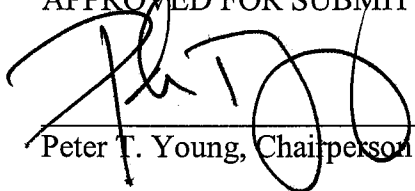
- B. Review and approval by the Department of the Attorney General; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
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Board of Land and Natural Resources
State of Hawaii
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HAWAII

Grant of Perpetual, Non-Exclusive Easement to Philip K. Binney and Peter A. Binney for Access and Utility Purposes, Keahilaka, Puna, Hawaii, Tax Map Key: 3rd/1-3-08:12.

APPLICANT:

Philip K. Binney and Peter A. Binney, Tenants in Common, whose mailing address is 1336 Mokulua Drive, Kailua, Hawaii 96734.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Malama-Ki situated at Keahialaka, Puna, Hawaii, identified by Tax Map Key: 3rd/1-3-08:12, as shown on the attached map labeled Exhibit A.

AREA:

2.437 acres, more or less.

ZONING:

State Land Use District:	Agriculture
County of Hawaii CZO:	Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

February 25, 2005

ITEM D-1

EXHIBIT A

Binney-Keahialaka Esmnt
TMK: 3rd/1-3-08:12

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CHARACTER OF USE:

For access and utility:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

DCCA VERIFICATION:

Not applicable. The Applicant as an individual/landowner and is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Pay for an appraisal to determine one-time payment;
2. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
3. That an easement for similar purposes be obtained from the University of Hawaii, over the State lands encumbered under Governor's Executive Order No. 1908.

REMARKS:

The subject State property, identified as Parcel 12 of Tax Map Key: 3rd/1-3-08, comprise the

EXHIBIT A

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entirety of an existing graveled roadway, which was formerly under the Puna Sugar Company, Limited. By Deed dated November 11, 1982, the Puna Sugar Company Limited, conveyed all of its rights, title and interest in and to that segment of the subject roadway to the State of Hawaii, under Land Office Deed No. S-27,508. The subject roadway currently serves as an access to various private properties in the area, which includes a parcel encumbered under Governor's Executive Order No. 1908 to the University of Hawaii for Agriculture Experimental Station. Those private properties currently utilizing the existing roadway, have not obtained easement documents from the State, authorizing its use of the subject roadway as their respective private legal accesses. Staff will, in the immediate future, attempt to contact these private landowners to notify/ remind them that an easement is required from the State, to enable its continued use over the subject roadway.

By letter dated November 9, 2004, Philip Kai Binney, requested a perpetual, non-exclusive easement over State lands at Malama Ki, Keahialaka, Puna, Hawaii, Tax Map Key: 3rd/ 1-3-08:12. Mr. Binney's attempts to acquiring a legal access for his property, originates to a request dated February 25, 1992, to the University of Hawaii. The request was held in abeyance until it could be determined and verified that the State had jurisdiction over the subject roadway. The Binney property, identified as Tax Map Key: 3rd/ 1-3-08:08, continues to be landlocked with no legal accesses to any governmental roadways. Mr. Binney already has an easement from the University of Hawaii for ingress/egress over the State lands identified as Parcel 31 of TMK: 3rd/ 1-3-07, and encumbered under EO 1908. Mr. Binney has been allowed to utilize the existing roadway identified as Parcel 12 and the service roads through the University property to access his lot.

Mr. Philip Binney and Mr. Peter Binney have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions

Various governmental agencies were solicited for comments. To date, all respondents indicated that they had no objections to the granting of the easement.

Agency	Comment
County of Hawaii:	
Parks & Recreation	No objections
Planning Department	No objections
Fire Department	No response
Police Department	No response
Water Department	No objections
State of Hawaii:	
DHHL	No response
DLNR-Aquatics Resources	No objections
DLNR-DOCARE	No response
DLNR-DOFAW, Na Ala Hele	No objections
DLNR-Historic Preservation	No response
DLNR-State Parks	No objections
Office of Hawaiian Affairs	No objections

EXHIBIT A

Binney-Keahialaka Esmnt
TMK: 3rd/1-3-08:12

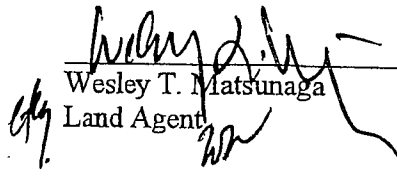
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RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual, non-exclusive easement to Philip K. Binney and Peter A. Binney, covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: 3rd/1-3-08:08, provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - C. That an easement for similar purposes be obtained over the State lands encumbered under Governor's Executive Order No. 1908, to the University of Hawaii;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:

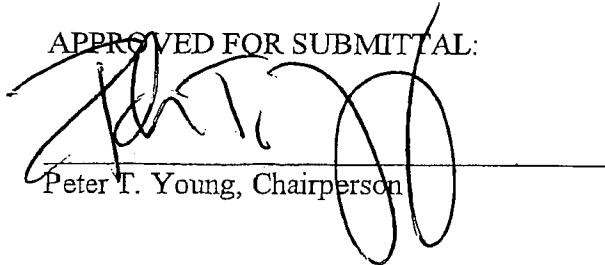
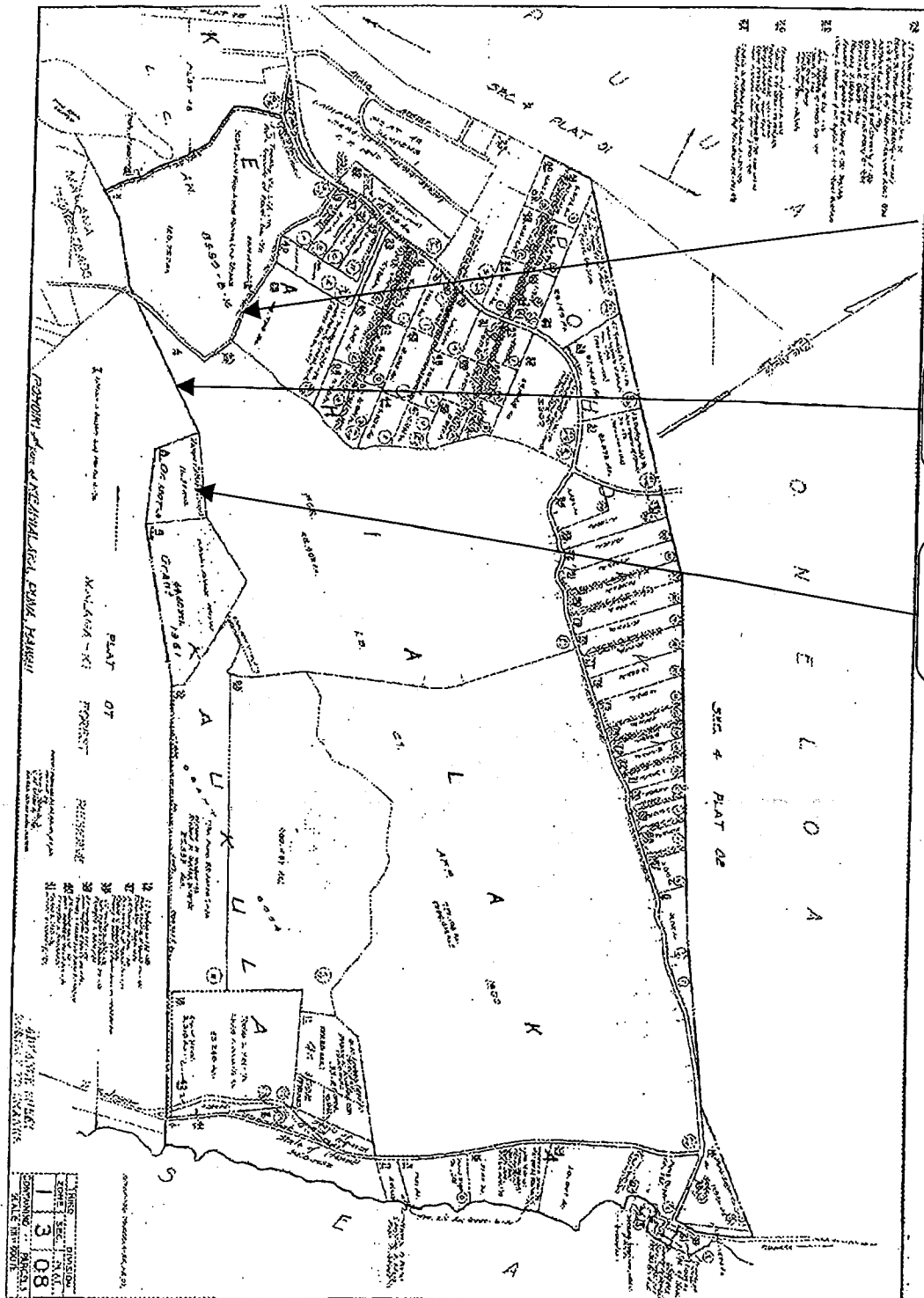

Peter T. Young, Chairperson

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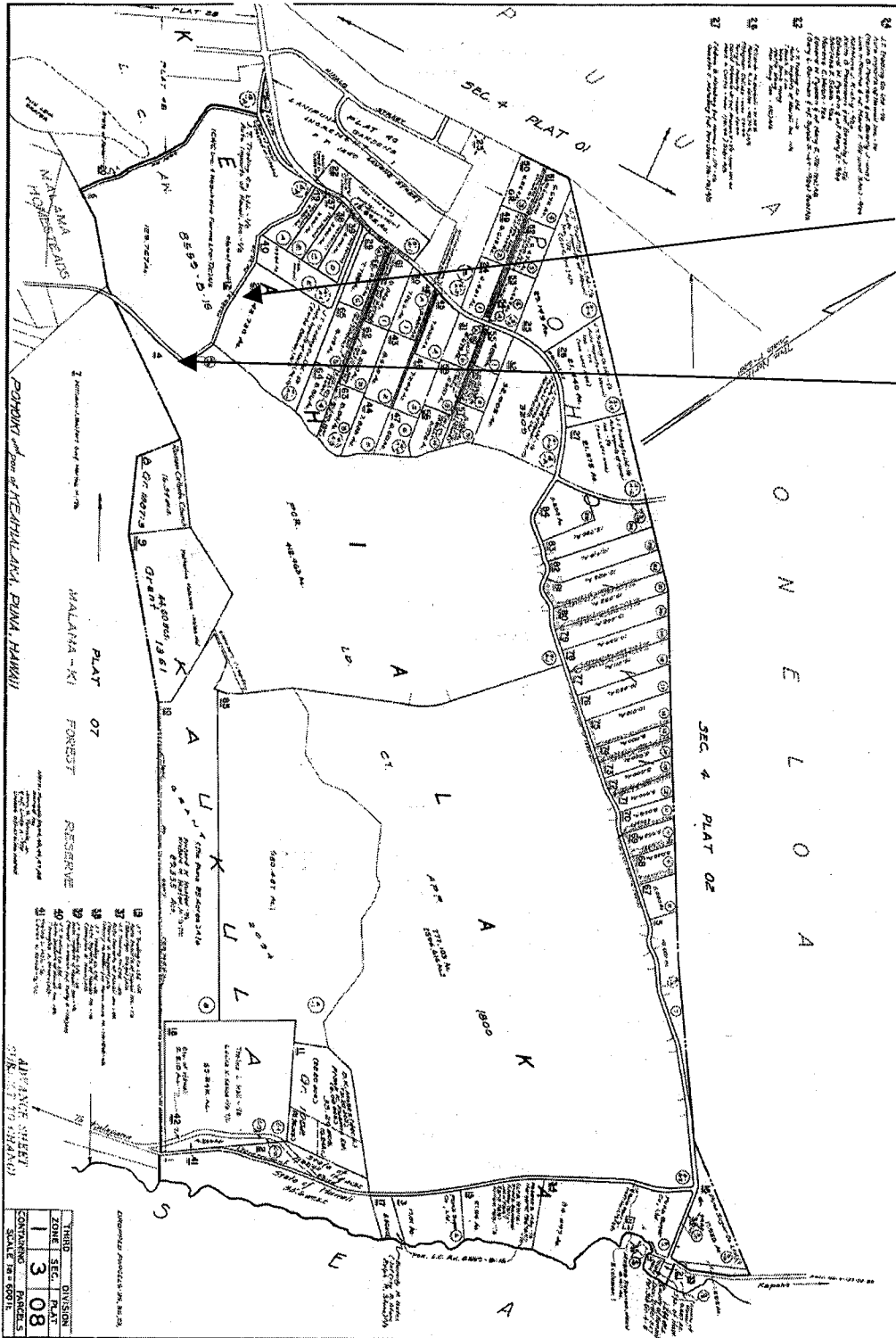
Proposed
Easement

Proposed
UH Easement

Binney
Property

EXHIBIT A

EXHIBIT A



Road B

Lot 4-B

EXHIBIT B

EXHIBIT C